

SERVED: February 3, 1999

NTSB Order No. EA-4742

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 2nd day of February, 1999

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14958
v.	)	
	)	
JOHN E. SOUTHWORTH,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

The respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, rendered at the conclusion of an evidentiary hearing held on December 11, 1997.<sup>1</sup> By that decision, the law judge affirmed the order (complaint) of the Administrator, as amended, which alleged that respondent operated an aircraft when that aircraft had not received an annual inspection within the 12 months prior to the flight,

---

<sup>1</sup>The initial decision is attached.

thereby violating section 91.409(a) of the Federal Aviation Regulations (FAR, 14 C.F.R. Part 91), 49 C.F.R. § 91.409(a).<sup>2</sup> Since, however, the Administrator withdrew one of the allegations in the original complaint,<sup>3</sup> the law judge reduced the sanction from a 30 to a 15-day suspension of respondent's commercial pilot certificate.<sup>4</sup>

Respondent argues on appeal that the law judge erred in his credibility assessments, improperly excluded evidence, and failed to consider all the facts when he determined that respondent violated FAR section 91.409(a)(1).<sup>5</sup> As discussed below, we find that respondent has identified no valid basis for reversing the law judge's decision and, as a result, we deny the appeal.

The key facts are not in dispute. On February 19, 1996, respondent signed a rental agreement with Hesperia Aviation, a fixed base operator, allowing him to rent aircraft from the company. Between that date and June 12, 1996 (the date of the

---

<sup>2</sup>Section 91.409(a)(1) states, in pertinent part, that "[N]o person may operate an aircraft unless, within the preceding 12 calendar months, it has had ... an annual inspection in accordance with part 43 of this chapter and has been approved for return to service by a person authorized by § 43.7 of this chapter...."

<sup>3</sup>The original complaint alleged two separate instances of respondent operating the aircraft without it having had a current annual inspection. At the hearing, the Administrator withdrew one of those allegations.

<sup>4</sup>The Administrator did not appeal the reduction in sanction.

<sup>5</sup>Respondent filed an appeal brief; the Administrator filed a brief in reply.

flight at issue), respondent had, on more than one occasion,<sup>6</sup> rented from Hesperia a Cessna 152, N68757. The Administrator alleged and respondent admitted that the aircraft had become due for an annual inspection on May 31, 1996, and that respondent operated the aircraft on June 12, 1996.

At the hearing and in his appeal, respondent contends that, although he operated the aircraft when it did not have a current annual inspection, he should not be found to have violated section 91.409(a) of the FAR because, as the renter of an aircraft, he was justified in assuming that the aircraft was in an airworthy condition when it was offered for rent, especially since he believed that Hesperia was a flight school certified under FAR Part 141. Further, he asserts that there is no requirement in the FAR that a pilot, before he rents an aircraft, check its logbooks to ensure that the aircraft has had all the requisite inspections. The Administrator maintains that under the regulation, respondent may not operate an aircraft that does not have a current annual inspection and, although there is no explicit requirement in the FAR that he check the logbooks, that it is the best and most assured way of confirming that the aircraft had been inspected within the past 12 months. The Administrator emphasized that respondent should have known this, especially since he is a certified flight instructor.

We find respondent's arguments unpersuasive. There was no evidence to suggest that respondent asked the owner, on or around

---

<sup>6</sup>The number of flights was not specified in the record.

June 12, to see the logbooks or even whether the aircraft was current on all its inspections. While he may have presumed that an aircraft offered for rent would be perfectly maintained and inspected, that presumption was not a reasonable one, whether or not the owner ran a Part 141 flight school. As the law judge noted, the pilot-in-command is ultimately responsible for conducting the flight in accordance with applicable regulations, one of which prohibits the operation of an aircraft that has not received an annual inspection within the past 12 months. He found that, in respondent's situation, the expectation that the inspection had been done is not sufficient to relieve respondent of this responsibility. We have been presented with no reason to disturb that decision.

The instant case can be distinguished from Administrator v. Miller, 5 NTSB 407 (1985), where a respondent also had rented and operated an aircraft when it had not passed an annual inspection within the previous 12 months. We noted that Mr. Miller relied on his own personal experience with the plane over the previous six or seven years, representations by the owner regarding the condition of the aircraft, as well as "occasional reviews of its maintenance records," when he assumed that the aircraft had been properly maintained. <sup>7</sup> Id. at 407, 409. In the instant case, respondent never saw the maintenance records of the aircraft, had entered into a business relationship with the owner just a few

---

<sup>7</sup>See also Miller at 409, dissent of Chairman Burnett (reliance on owner's general representation of plane's condition not a substitute for checking the maintenance records).

months before the flight, and had not been apprised by the owner, on or around the date of the flight, of any maintenance information on the aircraft. Further, as the law judge pointed out, respondent is a commercial pilot and a certified flight instructor and, as such, should have known that the PIC is responsible for ascertaining whether the aircraft is airworthy. <sup>8</sup>

Respondent's credibility argument likewise is unavailing. He claims that the law judge should have believed him when he testified that the owner said the maintenance logbooks were not available for him to review, rather than the owner, who testified that respondent never asked to see the books. As is well-established, the Board gives considerable deference to a law judge's credibility determination, as he is in the best position to evaluate the demeanor of the witnesses. Respondent has not provided us with a basis upon which to justify substituting a different determination for the credibility assessment of the law judge, i.e., that the law judge's findings are clearly erroneous or inherently incredible. See Administrator v. Smith, 5 NTSB 1560, 1563 (1986). Furthermore, even assuming arguendo that respondent was denied access to the logbooks, that does not excuse his operation of the aircraft when it did not have a current annual inspection. In fact, one might think that a reasonable, prudent pilot would refuse to fly an aircraft if he

---

<sup>8</sup>See Administrator v. Doppes, 5 NTSB 50 (1985) (The respondent's experience and background may be considered in deciding whether he should have known an aircraft was not airworthy.).

were told that he could not view its maintenance logbooks after he had expressly requested to see them. <sup>9</sup>

As for sanction, the law judge explained that, while precedent generally supported a 30-day suspension, the elimination of one charge of the complaint justified a reduction to a 15-day suspension. We have been presented with no reason to disturb his decision, which appears to be supported by the record.

**ACCORDINGLY, IT IS ORDERED THAT :**

1. Respondent's appeal is denied;
2. The order of the Administrator, as modified by the law judge, is affirmed;
3. The initial decision is affirmed; and
4. The 15-day suspension of respondent's commercial pilot certificate shall begin 30 days after the service date of this opinion and order. <sup>10</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

---

<sup>9</sup>As for his evidentiary arguments, respondent has not identified any error. The law judge excluded evidence that was not relevant to the June 12 flight but admitted, for credibility purposes only, two letters regarding a February 16, 1996 flight.

We have considered all of respondent's other arguments and find them unpersuasive.

<sup>10</sup>For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).